

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

P.R. 10/10/05
J.S. DR



10/29/05

P.M.

TIME A.M.

THE ANNUITY, PENSION, WELFARE and TRAINING FUNDS of the INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 14-14B, AFL-CIO, by its TRUSTEES EDWIN L. CHRISTIAN, CHRIS CONFREY, JOHN CRONIN, FRANK DiMENNA, ALFRED GEROSA, JOHN HYERS, DANIEL NOESGES and JOHN F. O'HARE, and JOHN and JANE DOE, as Beneficiaries of the ANNUITY, PENSION, WELFARE and TRAINING FUNDS of the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 14-14B, AFL-CIO,

**STIPULATION OF
SETTLEMENT &
ORDER OF
DISCONTINUANCE**

CV-05-4428 (AR)

Plaintiffs,

-against-

PERSICO CONTRACTING & TRUCKING CO.,

Defendant.

X

This **STIPULATION OF SETTLEMENT** is made by and between the parties hereto, to wit, Plaintiffs, THE ANNUITY, PENSION, WELFARE and TRAINING FUNDS of the INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 14-14B, AFL-CIO ("LOCAL 14") (collectively referred to hereafter as the "Plaintiffs"), and Defendant PERSICO CONTRACTING & TRUCKING CO. ("PERSICO CONTRACTING").

WHEREAS, Defendant PERSICO CONTRACTING is a party to a collective bargaining agreement with LOCAL 14 which provides for contractually required fringe benefit contributions to the LOCAL 14 TRUST FUNDS; and

WHEREAS, the terms of the LOCAL 14 TRUST FUNDS' Trust Agreements and/or the applicable collective bargaining agreement, along with the Employee Retirement Income Security

Act of 1974, 29 U.S.C. Section 1132(g)(2)(E), entitle Plaintiffs to audit the books and records of PERSICO CONTRACTING to determine whether a fringe benefit deficiency exists; and

WHEREAS, Defendant PERSICO CONTRACTING recognizes that it is responsible for:

(1) permitting and cooperating with the performance of the aforementioned audit of the corporate defendant's books and records; and (2) satisfying any fringe benefit deficiency discovered and calculated as a result of said audit; and

WHEREAS, the parties are desirous of resolving in this Stipulation of Settlement and Order of Discontinuance all disputes between them.

NOW THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto mutually agree as follows:

1. Defendant PERSICO CONTRACTING consents to the performance of the aforementioned audit by the Plaintiffs' auditors on December 9, 2005 at the offices of PERSICO CONTRACTING, along with such other dates as thereafter may be reasonably requested by the Plaintiffs and its auditors to complete said audit.

2. The audit shall cover the three year period of July 1, 2002 through June 30, 2005 and Defendant PERSICO CONTRACTING agrees to produce the following documents for the auditor for said period:

1. Tax Forms 941s;
2. Quarterly Payroll Tax Forms a/k/a NYS-45 Tax Forms;
3. Corporate Payroll Records (including information identifying hours paid and gross wages);
4. Cash Disbursements Records;
5. Tax Forms W-2s;
6. Payroll Reports (provided to the union or fund office, if applicable); and
7. Canceled Checks.

3. In the event that a fringe benefit deficiency is calculated as a result of said audit being performed, Plaintiffs agree to provide Defendant PERSICO CONTRACTING with a demand for payment of said deficiency and a copy of said auditor's report along with a period of ten (10) business days to review and respond to said report, or to satisfy the payment of said deficiency by forwarding a certified check to Plaintiffs' attorney at the address provided below.

4. In the event that Defendant PERSICO CONTRACTING responds to said audit report and disputes the contents thereof, the Parties shall attempt to mutually resolve the dispute over an additional ten (10) business day period. If the dispute is not mutually resolved during said ten (10) business day period, Defendant PERSICO CONTRACTING authorizes the Plaintiffs' counsel to reopen these proceedings before the court.

5. Subject to this matter being reopened pursuant to the terms articulated herein, this action is hereby settled as to all the Defendants herein.

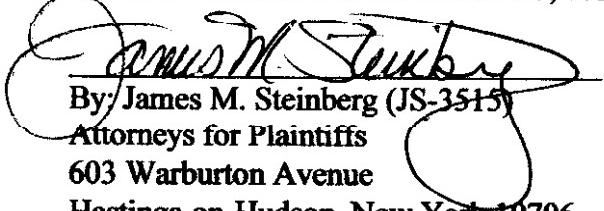
IT IS HEREBY FURTHER STIPULATED AND AGREED, by and between the undersigned, including the attorneys of record for the Plaintiffs and the Defendant, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of this action, the above-captioned action shall be discontinued, without costs to either party as against the other, subject to reopening in the event of default or failure of any payment, term or condition agreed to, required or contained in this Stipulation of Settlement and Order of Discontinuance.

IT IS HEREBY IN ADDITION STIPULATED AND AGREED, by and between the undersigned, including the attorneys of record for the Plaintiffs and the Defendant, that this Stipulation may be executed in any number of counterparts and by different parties hereto in

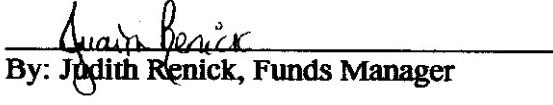
separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same Stipulation.

Dated: Hastings-on-Hudson, New York
November 21, 2005

BRADY McGUIRE & STEINBERG, P.C.


By: James M. Steinberg (JS-3515)
Attorneys for Plaintiffs
603 Warburton Avenue
Hastings-on-Hudson, New York 10706
(914) 478-4293

THE ANNUITY, PENSION, WELFARE
and TRAINING FUNDS of the
INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 14-14B, AFL-CIO


By: Judith Renick, Funds Manager

So Ordered:


The Hon. Allyne Ross, U.S.D.J.

CLIFFORD H. GREENE & ASSOCIATES

By: Clifford H. Green (CG-)
Attorneys for Defendant
467 North Avenue
New Rochelle, New York 10801
(914) 738-5992

PERSICO CONTRACTING & TRUCKING
CO.

By:
Title:

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Dated: Hastings-on-Hudson, New York
November , 2005

BRADY McGUIRE & STEINBERG, P.C.

By: James M. Steinberg (JS-3515)
Attorneys for Plaintiffs
603 Warburton Avenue
Hastings-on-Hudson, New York 10706
(914) 478-4293

THE ANNUITY, WELFARE and
APPRENTICESHIP SKILL IMPROVEMENT & SAFETY FUNDS of the
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 15, 15A, 15C & 15D,
AFL-CIO

By: Patrick J. Keenan, Funds Administrator

So Ordered:

The Hon. John G. Koeltl, U.S.D.J.

CLIFFORD H. GREENE & ASSOCIATES



By: Clifford H. Greene (CG-JS)
Attorneys for Defendant
467 North Avenue
New Rochelle, New York 10801
(914) 738-5992

PERSICO CONTRACTING & TRUCKING CO.



By:
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